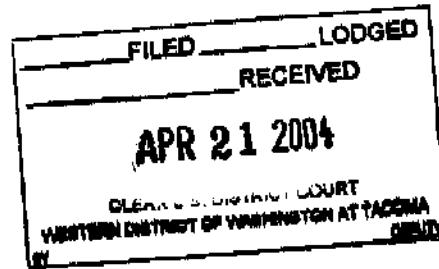




04-CR-05195-MISC



UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

UNITED STATES OF AMERICA,

Plaintiff,

v.

TWIN CITY SALE, INC.,

Defendant.

} NO. CR04-5195RBL

PLEA AGREEMENT
(Felony)

The United States of America, by and through John McKay, United States Attorney for the Western District of Washington, and Helen J. Brunner, Assistant United States Attorney and James D. Oesterle, Special Assistant United States Attorney for said District, and the defendant, Twin City Sale, Inc, through its authorized representative Kyle Cheney, and his attorney, Zenon Olbertz, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

1. Waiver of Indictment. The defendant corporation, through its authorized representative, having been advised of the right to be charged by Indictment, agrees to waive that right and enter a plea of guilty to the charge brought by the United States Attorney in a Felony Information.

2. The Charge. The defendant corporation, having been advised through its authorized representative of the right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to an Information charging the knowing discharge of pollutants to a water of the United States to the City of Centralia sewer system without complying with the

1 ~~a permit~~
 application regulations, in violation of 33 U.S.C. §§ 1311 and 1319(c)(2)(A). By entering
 2 this plea of guilty, the defendant corporation hereby waives all objections to the form of
 3 the charging document. The undersigned representative of the corporate defendant, Twin
 4 City Sale, Inc., represents that he is authorized to enter into this plea agreement. On or
 5 before the date of entry and filing of the Plea Agreement, Twin City Sale, Inc. shall
 6 provide to the United States and the Court: (1) a true and correct copy of the resolution
 7 issued by Twin City Sale's Board of Directors authorizing the undersigned representative
 8 to enter into this plea agreement and appear at the Rule 11 hearing and enter pleas on
 9 behalf of the company.

10 3. Elements of the Offense. The defendant corporation, through its authorized
 11 representative acknowledges an awareness of the nature of the offense charged in the
 12 Felony Information. Specifically, if this case proceeded to trial, the government would be
 13 required to establish, beyond a reasonable doubt, the elements of the offense of a knowing
 14 discharge of pollutants as charged in Information, in violation of Title 33, United States
 15 Code, Sections 1311 and 1319(c)(2)(A), as set forth below:

16 First, the defendant, by and through the actions of its employees, knowingly
 17 discharged pollutant through a point source;

18 Second, the pollutants were discharged into a water of the United States;

19 Third, the defendant, by and through the actions of its employees, did not
 20 have permit for the discharge as required by the Clean Water Act.

21 4. The Penalties. The defendant corporation understands that the statutory
 22 penalties for the offense of knowingly discharging pollutants as charged in Information,
 23 in violation of Title 33, United States Code, Sections 1311 and 1319(c)(2)(A), are as
 24 follows:

25 a. A fine of not less than five thousand dollars (\$5,000), with a
 26 maximum fine of five hundred thousand dollars (\$500,000), and a special penalty
 27 assessment of four hundred dollars (\$400). The defendant corporation agrees that the
 28 special penalty assessment shall be paid at or before the time of sentencing.

1 The defendant corporation agrees to submit a completed Financial Statement of
2 Debtor form as requested by the United States Attorney's Office.

3 5. Rights Waived by Pleading Guilty. The defendant corporation, through its
4 authorized representative, understands that, by pleading guilty, he knowingly and
5 voluntarily waives the following rights:

- 6 a. The right to plead not guilty, and to persist in a plea of not guilty;
7 b. The right to a speedy and public trial before a jury;
8 c. The right to the effective assistance of counsel at trial;
9 d. The right to be presumed innocent until guilt has been established at
10 trial, beyond a reasonable doubt;
11 e. The right to confront and cross-examine witnesses against it at trial;
12 f. The right to compel or subpoena witnesses to appear on the
13 corporation's behalf at trial; and
14 g. The right to appeal a finding of guilt or any pretrial rulings.

15 6. Applicability of Sentencing Guidelines. Through its authorized
16 representatives, defendant understands and acknowledges that the United States
17 Sentencing Guidelines promulgated by the United States Sentencing Commission are
18 applicable to this case, except that pursuant to USSG §§ 8C2.1 and 8C2.10, the United
19 States Sentencing Guidelines are not applicable for purposes of determining a fine.
20 Instead, the fine is to be determined under 18 U.S.C. §§ 3553 and 3571. All other
21 sections of Chapter Eight of the Sentencing Guidelines that are applicable to corporate
22 defendants are applicable to this case, including provisions for probation and community
23 service.

24 7. Ultimate Sentence. Defendant acknowledges that no one has promised or
25 guaranteed what sentence the Court will impose.

26
27 8. Sentencing Agreements. The parties agree that the appropriate sentence to
28 be imposed by the court on this corporate defendant at sentencing is a fine in the amount

1 of twenty thousand dollars (\$20,000), and a period of probation of three years. The fine
 2 is to be paid during the period of probation according to the following schedule. The
 3 corporate defendant is to make an initial payment of eight thousand (\$8,000) within
 4 30 days of the date of sentencing. Within one year, of that date, the corporation is to
 5 make a second payment of six thousand (\$6,000), with a final payment of six thousand
 6 (\$6,000) within one year thereafter. The parties further acknowledge that USSG § 8C3.4
 7 may have application in this case.

8 9. Restitution. Defendant shall make restitution in the amount of five
 9 thousand dollars (\$5,000), to the City of Centralia with credit for any amounts already
 10 paid. Said amount shall be due and payable immediately and shall be paid in accordance
 11 with a schedule of payments as set by the United States Probation Office and ordered by
 12 the Court.

13 10. Statement of Facts. The parties agree on the following facts in support of
 14 the defendant corporation's guilty plea and for purposes of calculating the base offense
 15 level of the Sentencing Guidelines. The defendant corporation, through its authorized
 16 representative admits it is guilty of the charged offense.

17 Twin City Sale, Inc. is a livestock auction business located at 1305 South Gold
 18 Street, Centralia, Washington that is owned and operated by Kyle Cheney. Twin City
 19 Sale, Inc. is in the business of offering livestock, primarily cows, for sale on a weekly
 20 basis through auctions held each Saturday. During 2000, between 350 to 800 cows
 21 passed through the auction house on a weekly basis. As part of the business, animals are
 22 delivered to the facility during the week prior to the regular Saturday auction. Animals
 23 auctioned on Saturday may remain at the facility until early the following week. During
 24 2000, on Sundays, Kyle Cheney directed his employees to clean the manure from the
 25 sales barn by using hoses to wash this manure into a series of three side-by-side sloped
 26 pits immediately behind the barn. The solid material collected in the bottom of the pits.
 27 The liquid animal waste was allowed to overflow from the pits into a series of vertical
 28 concrete pipes that ultimately discharged to a drainage ditch that ran along the boundary

1 of the property. The ditch drained to a collection pond, the contents of which were
 2 pumped over a man-made levee into Salzer Creek. Salzer Creek is a tributary of the
 3 Chehalis River. Analyses of samples collected in the drainage ditch on April 2, 2000,
 4 disclosed very high levels of fecal coliform colonies.

5 11. Non-Prosecution of Additional Offenses. As part of this Plea Agreement,
 6 the United States Attorney's Office for the Western District of Washington agrees not to
 7 prosecute Defendant for any additional offenses known to it as of the time of this
 8 Agreement that are based upon evidence in its possession at this time, or that arise out of
 9 the conduct giving rise to this investigation into the discharge of pollutants from the Twin
 10 City Sale facility. In this regard, Defendant recognizes that the United States has agreed
 11 not to prosecute all of the criminal charges that the evidence establishes were committed
 12 by Defendant solely because of the promises made by Defendant in this Agreement.
 13 Defendant acknowledges and agrees, however, that for purposes of preparing the
 14 Presentence Report, the United States Attorney's Office will provide the United States
 15 Probation Office with evidence of all relevant conduct committed by Defendant.

16 12. Voluntariness of Plea. Defendant acknowledges that he has entered into
 17 this Plea Agreement freely and voluntarily, and that no threats or promises, other than the
 18 promises contained in this Plea Agreement, were made to induce Defendant to enter his
 19 plea of guilty.

20 13. Statute of Limitations. In the event that this Agreement is not accepted by
 21 the Court for any reason, or Defendant has breached any of the terms of this Plea
 22 Agreement, the statute of limitations shall be deemed to have been tolled from the date of
 23 the Plea Agreement to: (1) 30 days following the date of non-acceptance of the Plea
 24 Agreement by the Court; or (2) 30 days following the date on which a breach of the Plea
 25 Agreement by Defendant is discovered by the United States Attorney's Office.

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1 14. Waiver of Appeal. The defendant corporation is aware that 18 U.S.C.
2 § 3742 gives the right to appeal the sentence to be imposed and that other federal statutes
3 give a defendant the right to appeal other aspects of the conviction. In consideration of
4 the sentencing recommendation by the United, the defendant knowingly and voluntarily
5 agrees to waive the following rights:

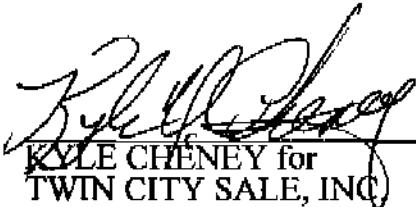
- 6 a. The right, conferred by 18 U.S.C. § 3742, to appeal the sentence
7 imposed by the Court;
- 8 b. The right to appeal any aspect of Defendants' conviction; and
9 c. The right to bring any collateral attack against Defendant's
10 conviction or sentence, except as it may relate to the effectiveness of legal representation.

11 15. Post-Plea Conduct. Defendant understands that the terms of this Plea
12 Agreement apply only to conduct that occurred prior to the execution of this Agreement.
13 If, after the date of this Agreement, Defendant should engage in conduct that would
14 warrant an increase in Defendant's adjusted offense level or justify an upward departure
15 under the Sentencing Guidelines (examples of which include, but are not limited to:
16 obstruction of justice, failure to appear for a court proceeding, criminal conduct while
17 pending sentencing, and false statements to law enforcement agents, the probation officer
18 or Court), the United States is free under this Agreement to seek a sentencing
19 enhancement or upward departure based on that conduct.

20 16. Completeness of Agreement. The United States and Defendant
21 acknowledge that these terms constitute the entire Plea Agreement between the parties.
22 This Agreement only binds the United States Attorney's Office for the Western District of
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1 Washington. It does not bind any other United States Attorney's Office or any other
2 office or agency of the United States, or any state or local prosecutor.

3 Dated this 21st day of April, 2004.

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KYLE CHENEY for
TWIN CITY SALE, INC.

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ZENON G. LOHERTZ
Attorney for Twin City Sale, Inc.
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HELEN J. BRUNNER
Assistant United States Attorney
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JAMES D. OESTERLE
Special Assistant United States Attorney
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